

# HARROW COUNCIL'S STATEMENT OF PRINCIPLES under Gambling Act 2005

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## **PART A**

### **1. Introduction**

Licensing authorities are required by the Gambling Act 2005 to publish a Statement of the Licensing Policy which they propose to apply when exercising their functions under the Act. This statement must be published at least every three years.

This Statement of Licensing Policy for premises authorised for gambling sets out the issues which the Licensing Authority will take into consideration when determining the grant of Premises Licences and other permissions and it covers licensed premises throughout the London Borough of Harrow. This Statement of Licensing Policy sets out those matters that will normally be taken into account when considering applications under the Gambling Act 2005 and also seeks to provide clarity for applicants, objectors, residents and other occupiers of property.

### **2. The Licensing Objectives**

In exercising most of their functions under the Gambling Act 2005, licensing authorities must have regard to the licensing objectives as set out in section 1 of the Act. The licensing objectives are:

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime
- Ensuring that gambling is conducted in a fair and open way
- Protecting children and other vulnerable persons from being harmed or exploited by gambling

It should be noted that the Gambling Commission has stated: “The requirement in relation to children is explicitly to protect them from being harmed or exploited by gambling”.

This licensing authority is aware that, as per Section 153, in making decisions about premises licences and temporary use notices it should aim to permit the use of premises for gambling in so far as it thinks it is:

- in accordance with any relevant code of practice issued by the Gambling Commission
- in accordance with any relevant guidance issued by the Gambling Commission
- reasonably consistent with the licensing objectives and
- in accordance with the authority’s statement of licensing policy

### **3. Authorised Activities**

Gambling is defined in the Act as either gaming, betting or taking part in a lottery:

- (a) Gaming means playing a game of chance for a prize
- (b) Betting means making or accepting a bet on:
  - (i) the outcome of a race, competition, or any other event or process,
  - (ii) the likelihood of anything occurring or not occurring, or
  - (iii) whether anything is or is not true.

- (c) A Lottery is where persons are required to pay in order to take part in an arrangement, during the course of which one or more prizes are allocated by a process that relies wholly on chance.

Private gaming in private dwellings and on domestic occasions is exempt from licensing or registration providing that no charge is made for participating, only equal chance gaming takes place, and it does not occur in a place to which the public have access.

#### **4. Consultation**

Licensing authorities are required by the Gambling Act 2005 to publish a statement of the principles which they proposed to apply when exercising their functions. This statement must be published at least every three years. The statement must also be reviewed from "time to time" and any amended parts re-consulted upon. The statement must be then re-published.

In preparing this Policy (or any revision thereafter), the Licensing Authority has (and will) consult with persons representing the interests of persons carrying on gambling businesses within the borough and with interested parties who represent the interest of persons who are likely to be affected by gambling.

Harrow Council has carried out a consultation exercise upon this statement before it is finalised and published. The Gambling Act requires that the following parties are consulted by Licensing Authorities:

- The Chief Officer of Police;
- One or more persons who appear to the authority to represent the interests of persons carrying on gambling businesses in the authority's area;
- One or more persons who appear to the authority to represent the interests of persons who are likely to be affected by the exercise of the authority's functions under the Gambling Act 2005.

This licensing authority has consulted:

- The Chief Officer of Police
- Social Services
- Trade Associations
- Residents Associations
- All existing licensed premises under the Gambling Act 2005
- All 'on' licensed premises under the Licensing Act 2003
- All other interested businesses such as takeaway shops, taxi offices.

*Our consultation took place between 18<sup>th</sup> May 2009 and 7<sup>th</sup> August 2009 and we followed the Revised Code of Practice (which came into effect in April 2004), the best practice guidance as set out by the Department for Business, Enterprise and Regulatory Reform and the Cabinet Office Guidance on consultations by the public sector. These documents are available via:*

<http://www.cabinetoffice.gov.uk/regulation/consultation/code/index.asp>  
<http://www.cabinetoffice.gov.uk/regulation/consultation/documents/pdf/code.pdf>  
[www.berr.gov.uk](http://www.berr.gov.uk)

The full list of comments received and the consideration by the Council of those comments are available on request by contacting the Licensing Service via the Council's website at: [www.harrow.gov.uk/licensing](http://www.harrow.gov.uk/licensing) or in writing to Licensing Service, Harrow Council, P O Box 18, Station Road, Harrow, HA1 2UT or emailing [licensing@harrow.gov.uk](mailto:licensing@harrow.gov.uk)

Should you have any comments as regards this policy statement please send them via e-mail or letter to the contact details specified as above.

## **5. Declaration**

In producing this final statement, the licensing authority declares that it has had regard to the licensing objectives of the Gambling Act 2005, the guidance issued by the Gambling Commission, and any responses from those consulted on the statement.

## **6. Responsible Authorities**

Section 157 of the Act identifies the bodies that are to be treated as responsible authorities. They are:

- (a) A licensing authority in England and Wales in whose area the premises is wholly/partly situated;
- (b) The Gambling Commission;
- (c) The chief officer of police/chief constable for the area in which the premises is wholly or partially situated;
- (d) The fire and rescue authority for the same area;
- (e) (i) In England and Wales, the local planning authority; or  
(ii) In Scotland, the planning authority;
- (f) The council constituted under section 2 of the Local Government etc (Scotland) Act 1994 (c.39) for an area in which the premises are wholly or partly situated;
- (g) An authority which has functions by virtue of enactment in relation to minimising or preventing the risk of pollution of the environment or of harm to human health in area in which the premises are wholly or partly situated;
- (h) A body, designated in writing by the licensing authority as competent to advise the authority about the protection of children from harm;
- (i) HM's Commissioners of Customs and Excise; and
- (j) Any other person prescribed in regulations by the Secretary of State.

The licensing authority is required by regulations to state the principles it will apply in exercising its powers under Section 157(h) of the Act to designate, in writing, a body which is competent to advise the authority about the protection of children from harm. The principles are:

- The need for the body to be responsible for an area covering the whole of the licensing authority's area; and
- The need for the body to be answerable to democratically elected persons, rather than any particular vested interest group.
- That this body is experienced in dealing with the protection of children

In accordance with the suggestion in the Gambling Commission's Guidance for local authorities, this authority designates the Local Safeguarding Children Board (please

contact Mr Steve Spurr, Snr Child Protection Co-ordinator, Civic Centre Civic 1 2nd Floor East Wing, Station Road, Harrow, HA1 2UT) for this purpose.

The contact details of all the Responsible Authorities under the Gambling Act 2005 are available via the Council's website at: [www.harrow.gov.uk/licensing](http://www.harrow.gov.uk/licensing)

## **7. Interested parties**

Interested parties can make representations about licence applications, or apply for a review of an existing licence. These parties are defined in the Gambling Act 2005 as follows:

“For the purposes of this Part a person is an interested party in relation to a premises licence or in relation to an application for or in respect of a premises licence if, in the opinion of the licensing authority which issues the licence or to which the application is made, the person-

- a) lives sufficiently close to the premises to be likely to be affected by the authorised activities,
- b) has business interests that might be affected by the authorised activities, or
- c) represents persons who satisfy paragraph (a) or (b)”

The licensing authority is required by regulations to state the principles it will apply in exercising its powers under the Gambling Act 2005 to determine whether a person is an interested party. These principles are:

- Each case will be decided upon its merits.
- This authority will not apply a rigid rule to its decision making.
- This Authority will consider the examples of considerations provided in the Gambling Commission's Guidance to local authorities.
- It will also consider the Gambling Commission's Guidance that "business interests" should be given the widest possible interpretation and include partnerships, charities, faith groups and medical practices.
  
- The Gambling Commission has recommended that licensing authorities state whom they consider falls within the category of those that represent persons living close to the premises, or have business interests that may be affected by it and such persons can include trade associations and trade unions, and residents' and tenants' associations (Gambling Commission Guidance for local authorities 6.25 & 8.17).
  
- Interested parties can be persons who are democratically elected such as councillors and MP's. No specific evidence of being asked to represent an interested party will be required as long as the councillor / MP represents the ward likely to be affected. Likewise, parish councils likely to be affected will be considered to be interested parties. Other than these however, this authority will generally require written evidence that a person/body (e.g. an advocate / relative) 'represents' someone who either lives sufficiently close to the premises to be likely to be affected by the authorised activities and/or represents a person that has business interests that might be affected by the authorised activities. A letter from one of these persons, requesting the representation should be sufficient.

If individuals wish to approach councillors to ask them to represent them then care should be taken that the councillors are not part of the Licensing Committee dealing with the licence application. If there are any doubts then please contact the Licensing Authority.

This Licensing Authority will take into account the following factors when interpreting 'sufficiently close':

- Size of the premises
- Nature of the premises
- Distance of the premises from the location of the person making the representation
- Potential impact of the premises, i.e. number of customers, routes likely to be taken by those visiting the establishment;

This list is not exhaustive.

This Licensing Authority will take into account the following factors when determining whether an individual is a person with a 'business interest that might be affected':

- Size of the premises
- The 'catchment' area of the premises (i.e. how far people travel to visit);
- Whether the person making the representation has business interests in that catchment area that might be affected.
- Whether or not the representation is purely based on 'competition' as the Licensing Authority does not consider this to be a relevant representation.

This list is not exhaustive.

## **8. Exchange of Information**

Licensing authorities are required to include in their statements the principles to be applied by the authority in exercising the functions under sections 29 and 30 of the Act with respect to the exchange of information between it and the Gambling Commission, and the functions under section 350 of the Act with the respect to the exchange of information between it and the other persons listed in Schedule 6 to the Act.

The principle that this licensing authority applies is that it will act in accordance with the provisions of the Gambling Act 2005 in its exchange of information which includes the provisions of the Data Protection Act and Freedom of Information Act. The licensing authority will also have regard to any Guidance issued by the Gambling Commission to local authorities on this matter when it is published, as well as any relevant regulations issued by the Secretary of State under the powers provided in the Gambling Act 2005.

This Licensing Authority confirms that it will act in accordance with the relevant legislation and guidance from the Commission and will adopt the principles of better regulation. The Licensing Authority recognises the need to work closely with the Gambling Commission in exchanging information as and when required, and understands that the Licensing Authority will have a key role in providing information to the Gambling Commission and will provide information to the Commission to assist it in carrying out its functions.

The Licensing Authority will work closely with the Gambling Commission, Local Police Enforcement in Harrow and with other Responsible Authorities where there is a need to determine whether there is a need for information on specific premises and in order to target agreed problem and high risk premises that require greater attention.

## **9. Enforcement**

Licensing authorities are required by regulation under the Gambling Act 2005 to state the principles to be applied by the authority in exercising the functions under Part 15 of the Act with respect to the inspection of premises; and the powers under section 346 of the Act to institute criminal proceedings in respect of the offences specified.

This licensing authority's principles are that:

It will be guided by the Gambling Commission's Guidance for local authorities and its own Enforcement Policy will endeavour to be:

- Proportionate: regulators should only intervene when necessary: remedies should be appropriate to the risk posed, and costs identified and minimised;
- Accountable: regulators must be able to justify decisions, and be subject to public scrutiny;
- Consistent: rules and standards must be joined up and implemented fairly;
- Transparent: regulators should be open, and keep regulations simple and user friendly; and
- Targeted: regulation should be focused on the problem, and minimise side effects.

As per the Gambling Commission's Guidance for local authorities this licensing authority will endeavour to avoid duplication with other regulatory regimes so far as possible.

The main enforcement and compliance role for this licensing authority in terms of the Gambling Act 2005 will be to ensure compliance with the licence and other permissions which it authorises and any relevant Codes of Practice. The Gambling Commission will be the enforcement body for the operating and personal licences and illegal gambling. Concerns about manufacture, supply or repair of gaming machines will not be dealt with by the Licensing Authority but information will be passed on to the Gambling Commission where such concerns are found.

In considering enforcement action, the Licensing Authority will bear in mind the Human Rights Act, in particular:

- i) Article 1, Protocol 1 – peaceful enjoyment of possessions.
- ii) Article 6 – right to a fair hearing
- iii) Article 8 – respect for private and family life
- iv) Article 10 – right to freedom of expression

Any decision to instigate legal proceedings and the subsequent management of our criminal cases will take account of the criteria set down in the Code for Crown Prosecutors and Attorney General Guidelines.

This licensing authority will also keep itself informed of developments as regards the work of the Better Regulation Executive in its consideration of the regulatory functions of local authorities.

This licensing authority has signed up to the Enforcement Concordat agreement which can be accessed via their website:

<http://www.berr.gov.uk/whatwedo/bre/inspection-enforcement/implementing-principles/regulatory-compliance-code/enforcement/page46822.html> or by contacting the Licensing Department, Harrow Council at [licensing@harrow.gov.uk](mailto:licensing@harrow.gov.uk)

## **10. Licensing Authority functions**

Licensing Authorities are required under the Act to:

- Licence premises for gambling activities
- Consider notices given for the temporary use of premises for gambling
- Grant permits for gaming and gaming machines in clubs and miners' welfare institutes
- Regulate gaming and gaming machines in alcohol licensed premises
- Grant permits to family entertainment centres (FECs) for the use of certain lower stake gaming machines
- Grant permits for prize gaming
- Consider occasional use notices for betting at tracks
- Register small societies' lotteries
- Maintain a Register in the prescribed form as required under section 156 Gambling Act 2005.

It should be noted that local licensing authorities will not be involved in licensing remote gambling at all. This will fall to the Gambling Commission via operating licences.

## **PART B**

### **PREMISES LICENCES**

This licensing authority resolved on 11<sup>th</sup> December 2006, not to issue casino premises licences pursuant to s166 Gambling Act 2005. This resolution will lapse after three years. It is proposed to continue this resolution and if approved the resolution will continue for a further three years from the date of approval<sup>1</sup>.

#### **1. General Principles**

Premises Licences authorise the provision of gambling facilities on the following:

- Adult Gaming Centres (for Category B3, B4, C and D machines)
- Family Entertainment Centres (for Category C and D machines). The Licensing Authority may also issue Family Entertainment Centres Gaming Machine Permits that authorise the use of Category D machines only).
- Casino Premises
- Bingo Premises
- Betting Premises, including race tracks used by betting intermediaries

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<sup>1</sup> This wording will be amended when a determination on the reaffirmation on the resolution has been made.



Except in the case of race tracks (where the occupier may not be the person offering gambling), Premises Licenses will only be issued to people with the relevant Operating Licences.

Premises licences will be subject to the requirements set out in the Gambling Act 2005 and regulations, as well as specific mandatory and default conditions. Licensing authorities are able to exclude default conditions and also attach others, where it is believed to be appropriate.

The Licensing Authority when considering applications will not take into account whether or not there is an unfulfilled demand for gambling facilities within the borough of Harrow. Every application for a Premises Licence made to the Licensing Authority will be considered on its merits and will be treated fairly and objectively in accordance with the three Licensing Objectives. The Licensing Authority will consult with responsible authorities on all applications.

This licensing authority is aware that in making decisions about premises licences it should aim to permit the use of premises for gambling in so far as it thinks it is:

- In accordance with any relevant code of practice issued by the Gambling Commission;
- In accordance with any relevant guidance issued by the Gambling Commission ;
- Reasonably consistent with the licensing objectives; and
- In accordance with the authority's statement of licensing policy.

It is appreciated that as per the Gambling Commission's Guidance for local authorities "moral objections to gambling are not a valid reason to reject applications for premises licences" (except as regards any 'no casino resolution' - see section on Casinos below).

In considering applications and in making any decisions, the Licensing Authority will take into account the Human Rights Act, in particular Articles 1, 6, 8 and 10.

**Definition of "premises"** - Premises is defined in the Act as "any place". Section 152 therefore prevents more than one premises licence applying to any place. But there is no reason in principle why a single building cannot to be subject to more than one premises licence, provided they are for different parts of the building and the different parts of the building can be reasonably regarded as being different premises.

Whether different parts of a building can properly be regarded as separate premises will depend on the circumstances and the suitability of the division and this is a matter for discussion between the operator and the licensing authority. The crux of the matter is whether the proposed premises are genuinely separate premises that merit their own licence and are not an artificially created part of what is readily identifiable as a single premise.

In determining whether two or more premises are truly separate, the licensing authority will consider all the circumstances of the particular case; these may include:

- Is a separate registration for business rates in place for the premises?
- Is the premises' neighbouring premises owned by the same person or someone

else?

- Can each of the premises be accessed from the street or a public passageway?
- Can the premises only be accessed from any other gambling premises?

Where there are issues about the sub-division of a single building or plot, the licensing authority will ensure that mandatory conditions relating to access between premises are observed. The broad principle is that there can be no access from one licensed premises to another, except between premises which allow access to those under the age of 18 and with the further exceptions that licensed betting premises may be accessed from other licensed betting premises. There is no definition of 'direct access' in the Act or Regulations.

Section 152 of the Act means that different premise licences cannot apply in respect of a single premise at different times. There is no temporal element to a premises licence. Therefore, a premise could not, for example, be licensed as a bingo club on week days and a betting shop at weekends.

It should also be noted that an applicant cannot obtain a full premises licence until the premises in which it is proposed to offer the gambling are constructed. The Gambling Commission has advised that references to "the premises" are to the premises in which gambling may now take place. Thus a licence to use premises for gambling will only be issued in relation to premises that are ready to be used for gambling. This authority agrees with the Gambling Commission that it is a question of fact and degree whether premises are finished to a degree that they can be considered for a premises licence. The Gambling Commission emphasises that requiring the building to be complete ensure that the authority can, if necessary, inspect it fully, as can other responsible authorities with inspection rights.

**Location** - This licensing authority is aware that demand issues cannot be considered with regard to the location of premises but that considerations in terms of the licensing objectives can. As per the Gambling Commission's Guidance for local authorities, this authority will pay particular attention to the protection of children and vulnerable persons from being harmed or exploited by gambling, as well as issues of crime and disorder. Should any specific policy be decided upon as regards areas where gambling premises should not be located, this statement will be updated. It should be noted that any such policy does not preclude any application being made and each application will be decided on its merits, with the onus upon the applicant showing how potential concerns can be overcome.

When determining the location of proposed gambling facilities, the Licensing Authority in appropriate circumstances, will consider very carefully the following factors when considering applications for Premises Licences, permits and other permissions:

- Proximity of premises to local schools
- Proximity of premises to centres that pose a high risk to vulnerable and young persons
- Proximity of premises to residential areas where there is a high concentration of children and young people
- Proximity of premises to places of worship, particularly where Sunday Schools are in operation

This list is not exhaustive and each case will be determined on its merits.

**Duplication with other regulatory regimes** - This licensing authority will seek to avoid any duplication with other statutory / regulatory systems where possible, including planning. This authority will not consider whether a licence application is likely to be awarded planning permission or building regulations approval, in its consideration of it. It will though, listen to, and consider carefully, any concerns about conditions which are not able to be met by licensees due to planning restrictions, should such a situation arise.

**Licensing objectives** - Premises licences granted must be reasonably consistent with the licensing objectives. With regard to these objectives, this licensing authority has considered the Gambling Commission's Guidance to local authorities and some comments are made below.

**Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime** - This licensing authority is aware that the Gambling Commission will be taking a leading role in preventing gambling from being a source of crime. The Gambling Commission's Guidance does however envisage that licensing authorities should pay attention to the proposed location of gambling premises in terms of this licensing objective. Thus, where an area has known high levels of organised crime this authority will consider carefully whether gambling premises are suitable to be located there and whether conditions may be suitable such as the provision of door supervisors. This licensing authority is aware of the distinction between disorder and nuisance and will consider factors such as whether police assistance was required and how threatening the behaviour was to those who could see it, so as to make that distinction. Issues of nuisance cannot be addressed via the Gambling Act provisions.

**Ensuring that gambling is conducted in a fair and open way** - This licensing authority has noted that the Gambling Commission has stated that it would generally not expect licensing authorities to become concerned with ensuring that gambling is conducted in a fair and open way as this will be addressed via operating and personal licences. There is however, more of a role with regard to tracks which is explained in more detail in the 'tracks' section below.

**Protecting children and other vulnerable persons from being harmed or exploited by gambling** - This licensing authority has noted the Gambling Commission's Guidance for local authorities states that this objective means preventing children from taking part in gambling (as well as restriction of advertising so that gambling products are not aimed at or are particularly attractive to children).

According to mandatory and default conditions relating to gambling premises that admit under 18's, any area where category B or C gaming machines are located must be:

- separated from the rest of the premises by a physical barrier which is effective to prevent access other than by an entrance designated for that purpose
- supervised at all times to ensure that under 18's do not enter the area
- arranged in a way that ensures that all parts of the area can be observed

- supervised by either:
  - (a) one or more persons whose responsibilities include ensuring that under 18's do not enter the areas
  - (b) CCTV monitored by one or more persons whose responsibilities include ensuring that under 18's do not enter the areas.

A notice stating that no person under the age of 18 is permitted to enter the area must be displayed in a prominent place at the entrance to the area.

Where there are age restrictions on entry to certain premises, the Licensing Authority recommends applicants consider and adopt BACTA's and GamCare's joint training initiative on a Site Age-of-Entry Control Policy.

This licensing authority will also make itself aware of the Codes of Practice which the Gambling Commission issues as regards this licensing objective, in relation to specific premises.

As regards the term "vulnerable persons" it is noted that the Gambling Commission is not seeking to offer a definition but states that "it will for regulatory purposes assume that this group includes people who gamble more than they want to; people who gambling beyond their means; and people who may not be able to make informed or balanced decisions about gambling due to a mental impairment, alcohol or drugs." This licensing authority will consider this licensing objective on a case by case basis. Should a practical definition prove possible in future then this policy statement will be updated with it, by way of a revision.

**Conditions** - Any conditions attached to licences will be proportionate and will be:

- relevant to the need to make the proposed building suitable as a gambling facility
- directly related to the premises and the type of licence applied for;
- fairly and reasonably related to the scale and type of premises: and
- reasonable in all other respects.

Decisions upon individual conditions will be made on a case by case basis, although there will be a number of measures this licensing authority will consider utilising should there be a perceived need, such as the use of supervisors, appropriate signage for adult only areas etc. There are specific comments made in this regard under some of the licence types below. This licensing authority will also expect the licence applicant to offer his/her own suggestions as to way in which the licensing objectives can be met effectively.

This licensing authority will also consider specific measures which may be required for buildings which are subject to multiple premises licences. Such measures may include the supervision of entrances; segregation of gambling from non-gambling areas frequented by children; and the supervision of gaming machines in non-adult gambling specific premises in order to pursue the licensing objectives. These matters are in accordance with the Gambling Commission's Guidance.

This authority will also ensure that where category A, B and C machines are on offer in premises to which children are admitted:

- all such machines identified are located in an area of the premises which is

separated from the remainder of the premises by a physical barrier which is effective to prevent access other than through a designated entrance;

- only persons over 18 years of age are admitted to the area where these machines are located;
- access to the area where the machines are located is supervised;
- the area where these machines are located is arranged so that it can be observed by the staff or the licence holder; and
- at the entrance to and inside any such areas there are prominently displayed notices indicating that access to the area is prohibited to persons under 18.

These considerations will apply to premises including buildings where multiple premises licences are applicable.

This licensing authority is aware that tracks may be subject to one or more than one premises licence, provided each licence relates to a specified area of the track. As per the Gambling Commission's Guidance, this licensing authority will consider the impact upon the third licensing objective and the need to ensure that entrances to each type of premises are distinct and that children are excluded from gambling areas where they are not permitted to enter.

It is noted that there are conditions, which the Licensing Authority cannot attach to premises licenses which are:

- any condition on the premises licence which makes it impossible to comply with an operating licence condition
- conditions relating to gaming machine categories, numbers, or method of operation;
- conditions which provide that membership of a club or body be required (the Gambling Act 2005 specifically removes the membership requirement for casino and bingo clubs and this provision prevents it being reinstated and
- conditions in relation to stakes, fees, winning or prizes

**Door Supervisors** - The Gambling Commission advises in its Guidance for local authorities that licensing authorities may consider whether there is a need for door supervisors in terms of the licensing objectives for protection of children and vulnerable persons from being harmed or exploited by gambling, and also in terms of preventing premises becoming a source of crime.

For premises other than casinos and bingo premises, operators and licensing authorities may decide that supervision of entrances / machines is appropriate. If Door Supervisors are required, they must hold a valid SIA registration.

There is no evidence that the operation of betting offices has required door supervisors for the protection of the public. The authority will make door supervision requirement only if there is clear evidence from the history of trading at the premises that the premises cannot be adequately supervised from the counter and that door supervision is both necessary and proportionate.

**Gaming Machines** – The Gambling Commission is responsible for licensing manufacturers and suppliers of gaming machines and advises operators to obtain machines from Commission-licensed suppliers. Permit holder and those applying for

permits for clubs, alcohol licensed premises or family entertainment centres will also be advised through Commission Guidance to obtain gaming machines from Commission-licensed suppliers.

Section 172 of the Act prescribes the number and category of gaming machines that are permitted in each type of a gambling premises licensed by authorities. Neither the Gambling Commission nor the licensing authority has the power to set different limits or further expand or restrict the categories of machine that are permitted (with the exception of alcohol-licensed premises holding gaming permits where authorities have discretion to specify the number of permitted gaming machines).

Section 235 of the Act sets out the definition of a gaming machine and details exemptions for equipment that is not to be considered a gaming machine even though gambling can be performed on it. It should be noted that there remains a distinction between skill machines and gaming machines in that skill machines are unregulated.

In determining whether a machine is a gaming machine or a skill machine, this licensing authority will apply BACTA's Code of Practice for Skill with Prize (SWP) Machines. Therefore a machine will be regarded as Skill with Prize Machine (SWP) if the following criteria are met:

- The game must not be a game of chance as defined by section 6 of the Gambling Act 2005
- In non-licensed premises where children have access, the machine should not exhibit casino style games or have the appearance of a gaming machine
- Descriptions associated with gaming machines such as "jackpot" should be avoided
- The maximum prize available in a single game must not exceed £50 in cash (or non monetary prize). This does not apply to tournament games
- All games should be designed and operated to be fair to customers and rules should be available for view prior to a game commencing.

Where a machine does not meet the above criteria to be an SWP machine, the licensing authority may utilise its powers under s317 Gambling Act 2005, to remove the machines from the premises and bring legal proceedings under s242 Gambling Act 2005.

## **2. Adult Gaming Centres**

This Licensing Authority will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that under 18 year olds do not have access to the premises. Appropriate licence conditions may cover issues such as:

- Proof of age schemes
- CCTV
- Door supervisors
- Supervision of entrances / machine areas
- Physical separation of areas
- Location of entry

- Notices / signage
- Specific opening hours

This list is not exhaustive.

As regards the protection of vulnerable persons, this Licensing Authority will consider measures such as the use of provision of information leaflets / helpline numbers for organisations such as GamCare.

### **3. (Licensed) Family Entertainment Centres:**

This licensing authority will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority, for example, that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machine areas.

This licensing authority will expect applicants to offer their own measures to meet the licensing objectives however appropriate measures / licence conditions may cover issues such as:

- CCTV
- Supervision of entrances / machine areas
- Physical separation of areas
- Location of entry
- Notices / signage
- Specific opening hours
- Self-barring schemes
- Provision of information leaflets / helpline numbers for organisations such as GamCare.
- Measures / training for staff on how to deal with suspected truant school children on the premises

This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

This licensing authority will, as per the Gambling Commission's guidance, refer to the Commission's website to see any conditions that apply to operating licences covering the way in which the area containing the category C machines should be delineated. This licensing authority will also make itself aware of any mandatory or default conditions on these premises licences, when they have been published.

### **4. Casinos**

Potential licence applicants should note that a 'no-casino' resolution has been passed by this authority on 11<sup>th</sup> December 2006 and currently no applications for casino premises licences will be considered. It is proposed to continue this resolution and if approved the resolution will continue for a further three years from the date of approval<sup>2</sup>.

### **5. Bingo premises**

The licensing authority will need to be satisfied that bingo can be played in any bingo

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<sup>2</sup> This wording will be amended when a determination on the reaffirmation on the resolution has been made.

premises for which they issue a premises licence. This is a particularly relevant consideration where the operator of an existing bingo premises licence applies to vary their licence to exclude an area of the existing premises from its ambit and then applies for a new premises licence, or multiple licence, for that or those excluded areas.

Children and young people are allowed into bingo premises; however they are not permitted to participate in the bingo and if any category B or C machines are made available for use these must be separated from areas where children and young people are allowed.

Where category C or above machines are available in premises to which children are admitted licensing authorities should ensure that:

- all such machines are located in an area of the premises separate from the remainder of the premises by a physical barrier which is effective to prevent access other than through a designated entrance;
- only adults are admitted to the area where the machines are located;
- access to the area where the machines are located is supervised;
- the area where the machines are located is arranged so that it can be observed by staff of the operator or the licence holder; and
- at the entrance to, and inside any such area there are prominently displayed notices indicating that access to the area is prohibited to persons under 18.

## **6. Betting premises**

Whilst it is recognised that betting premises are permitted to offer gaming machines, including B2 gaming machines, betting should be the primary element of the gambling facilities being offered to customers in such premises. A betting premises licence authorises premises to be used for the 'provision of facilities for betting'. The ability to make up to four gaming machines within category B2 - D available is an additional authorisation conferred upon the holder of a betting premises licence; it is not a free standing right to make gaming machines available for use. It follows that unless a betting premises operator offers sufficient facilities for betting it should not be making gaming machines available on the premises in question.

## **7. Tracks**

This licensing authority is aware that tracks may be subject to one or more than one premises licence, provided each licence relates to a specified area of the track. As per the Gambling Commission's Guidance, this licensing authority will especially consider the impact upon the third licensing objective (i.e. the protection of children and vulnerable persons from being harmed or exploited by gambling) and the need to ensure that entrances to each type of premises are distinct and that children are excluded from gambling areas where they are not permitted to enter.

This authority will therefore expect the premises licence applicant to demonstrate suitable measures to ensure that children do not have access to adult only gaming facilities. It is noted that children and young persons will be permitted to enter track areas where facilities for betting are provided on days when dog-racing and/or horse racing takes place, but that they are still prevented from entering areas where gaming machines (other than category D machines) are provided.

This licensing authority will expect applicants to offer their own measures to meet the



licensing objectives however appropriate measures / licence conditions may cover issues such as:

- Proof of age schemes
- CCTV
- Supervision of entrances / machine areas
- Physical separation of areas
- Location of entry
- Notices / signage
- Specific opening hours
- Self-baring schemes
- Provision of information leaflets / helpline numbers for organisations such as GamCare

This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

### **8. Travelling Fairs**

The Act defines a travelling fair as 'wholly or principally' providing amusements and they must be on a site that has been used for fairs no more than 27 days per calendar. The Act does not change the principles on which travelling fairs have been regulated under previous legislation.

It has been noted that the 27-day statutory maximum for the land being used as a fair, is per calendar year, and that it applies to the piece of land on which the fairs are held, regardless of whether it is the same or different travelling fairs occupying the land. This licensing authority will work with its neighbouring authorities to ensure that land which crosses our boundaries is monitored so that the statutory limits are not exceeded.

Travelling fairs do not require a permit to provide gaming machines and can provide an unlimited number of Category D gaming machines provided that:

- The machines are operated in compliance with all relevant legal requirements
- The facilities for gambling are no more than ancillary amusement at the fair

### **9. Provisional Statements**

Applicants for premises licence must fulfil certain criteria – they must hold or have applied for an operating licence (except in the case of tracks) and they must have the right to occupy the premises in respect of which their premises licence application is made. However, these restrictions do not apply in relation to an application for a provisional statement.

Developers may wish to apply for provisional statements before they enter into a contract to buy or lease property or to judge whether a development is worth taking forward in light of the need to obtain a premises licence. It is also possible for an application for a provisional statement to be made for premises that already have a premises licence (either for a different type of gambling or the same type).

The process for considering an application for a provisional statement is the same as that for a premises licence application. Once the premises are constructed, altered or acquired the holder of a provisional statement may apply for the necessary premises licence. If a provisional statement has been granted, the licensing authority is

constrained in the matters is can consider when a premises licence application is made in respect of the same premises. No further representations from relevant authorities or interested parties can be taken into account unless they concern matters which could not have been addressed at the provisional statement stage, or they reflect a change in the applicant's circumstances. In addition, the Authority may refuse the premises licence (or grant it on terms different to those attached to the provisional statement) only by reference to matters:

- (a) which could not have been raised by objectors at the provisional licence stage
- (b) which is in the authority's opinion reflect a change in the operator's circumstances
- (c) where the premises has not been constructed in accordance with the plan and information submitted with the provisional statement application. This must be a substantial change to the plan and the licensing authority will discuss any concerns they have with the applicant before making a decision.

#### **10. Reviews:**

Requests for a review of a premises licence can be made by interested parties or responsible authorities, however, it is for the licensing authority to decide whether the review is to be carried-out. This will be on the basis of whether the request for the review is relevant to the matters listed below, as well as consideration as to whether the request is frivolous, vexatious, will certainly not cause this authority to wish alter/revoke/suspend the licence, or whether it is substantially the same as previous representations or requests for review.

- in accordance with any relevant code of practice issued by the Gambling Commission;
- in accordance with any relevant guidance issued by the Gambling Commission;
- reasonably consistent with the licensing objectives; and
- in accordance with the authority's statement of licensing policy.

The licensing authority can also initiate a review of a licence on the basis of any reason which it thinks is appropriate.

#### **11. Appeals**

There is a right of appeal by the applicant, should the Licensing Authority reject an application, similarly there is a right of appeal by a person who made representations or the applicant should the authority grant an application This appeal must be lodged within a period of 21 days from the day on which the applicant (i.e. person bringing the appeal) was notified by the Licensing Authority of the decision and must be made to the Magistrates' Court.

The Magistrates' Court may take into account the Licensing Authority's Licensing Policy, Gambling Commission's Guidance, any relevant Codes of Practice and the licensing objectives (after hearing the evidence).

### **PART C**

#### **Permits / Small Society Lotteries / Temporary & Occasional Use Notice**

Permits are required when premises provide a gambling facility but either the stakes and

prizes are very low or gambling is not the main function of the premises. The permits regulate gambling and the use of gaming machines in specified premises.

There are four classes of gaming machines: Categories A, B, C and D with category B further divided into sub-categories B1, B2, B3, B3A and B4.

A machine is not a gaming machine if the winning of a prize is determined purely by the player's skill.

The Act introduces a range of permits for gambling which are granted by licensing authorities. Forms of authorisations other than Premises Licenses are as follows:

- Unlicensed Family Entertainment Centres
- Gaming machines on alcohol-licensed premises
- Club Gaming Machines
- Club Gaming
- Prize Gaming

The licensing authority may only grant or reject an application for a permit. No conditions may be attached to a permit.

In addition, licensing authorities are responsible for receiving, from holders of alcohol-licensed premises (under the Licensing Act 2003) notifications that they intend to exercise their automatic entitlement to two gaming machines in their premises under section 282 of the Act.

### **1. Unlicensed Family Entertainment Centre gaming machine permits (Statement of Principles on Permits – Schedule 10 Para 7)**

Unlicensed Family Entertainment Centres (FECs) are able to offer only category D gaming machines in reliance on a gaming machine permit. Any number of category D machines can be made available with such a permit subject to other considerations such as fire regulations and health and safety. Permits cannot be issued in respect of vessels or vehicles.

An application to this licensing authority should be accompanied by the appropriate fee, plan of the premises, premises' risk assessment, proof of applicant's date and place of birth and proof of address (if an individual) or if a company, the registered company's number and details.

This licensing authority will expect the applicant to show that there are policies and procedures in place to protect children from harm. Harm in this context is not limited to harm from gambling but includes wider child protection considerations. The efficiency of such policies and procedures will each be considered on their merits, however, they may include appropriate measures / training for staff as regards suspected truant school children on the premises, measures / training covering how staff would deal with unsupervised very young children being on the premises, or children causing perceived problems on / around the premises. This licensing authority will also expect, as per Gambling Commission Guidance, that applicants demonstrate:

- a full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed FECs;
- that the applicant has no relevant convictions (those that are set out in Schedule

- 7 of the Act);
- that staff are trained to have a full understanding of the maximum stakes and prizes.

The licensing authority is not limited to these considerations and will determine each application on its merits.

## **2. (Alcohol) Licensed premises gaming machine permits - (Schedule 13 paragraph 4(1))**

Premises licensed to sell alcohol for consumption on the premises have an automatic entitlement to make available for use up to two gaming machines of categories C or D. The premises merely need to notify the licensing authority of their intention to utilise their automatic entitlement; the licensing authority has no discretion to consider the notification or turn it down. However, the licensing authority can remove the automatic authorisation by making an order under section 284 of the Act in respect of any particular premises if:

- provision of the machines is not reasonably consistent with the pursuit of the licensing objectives;
- gaming has taken place on the premises that breaches a condition of section 282 of the Gambling Act (i.e. that written notice has been provided to the licensing authority, that a fee has been provided and that any relevant code of practice issued by the Gambling Commission about the location and operation of the machine has been complied with);
- the premises are mainly used for gaming; or
- an offence under the Gambling Act has been committed on the premises.

If a premises wishes to make available for use more than two gaming machines, a licensed premises gaming machine permit must be obtained from the licensing authority. An application can only be made by the holder of the 'on-premises' alcohol licence (under the Licensing Act 2003) for the premises for which the application is made.

The licensing authority must consider that application based upon the licensing objectives, any guidance issued by the Gambling Commission issued under Section 25 of the Gambling Act 2005, and "*such matters as they think relevant.*" This licensing authority considers that "such matters" will be decided on a case by case basis but generally there will be regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machines. Measures which will satisfy the authority that there will be no access may include the adult machines being in sight of the bar, or in the sight of staff who will monitor that the machines are not being used by those under 18. Notices and signage may also be help. As regards the protection of vulnerable persons applicants may wish to consider the provision of information leaflets / helpline numbers for organisations such as GamCare.

It should be noted that the licensing authority can decide to grant the application with a smaller number of machines and/or a different category of machines than that applied for. Conditions (other than these) cannot be attached.

Holders of alcohol-licensed premises gaming machines permits are required to comply

with the Code of Practice drawn up by the Gambling Commission on the location and operation of machines.

With effect from 1<sup>st</sup> September 2007, all old 'section 34' permits issued under the Gaming Act 1968 were renamed 'alcohol-licensed premises gaming machine permits'. Where the holder of a premises licence under the Licensing Act 2003 applies to transfer that licence, he must also transfer any alcohol-licensed premises permit held in respect of the same premises. It is the new premises licence holder's responsibility to undertake this transfer. Failure to transfer the alcohol licensed gaming machine permit may result in prosecution under s242 Gambling Act 2005.

The licensing authority may cancel an alcohol-licensed premises permit in specified circumstances which include if the premises are used wholly or mainly by children or young persons or if an offence under the Act has been committed. Before it cancels a permit, the licensing authority will give the permit holder 21 days notice of intention to cancel, consider any representations made by the holder, hold a hearing if requested, and comply with any other prescribed requirements relating to the procedure to be followed. Where the authority cancels the permit, the cancellation does take effect until the period for appealing against that decision has elapsed or until the appeal is determined.

The authority may also cancel a permit if the holder fails to pay the annual fee unless failure is the result of an administrative error.

### **3. Prize Gaming Permits - (Statement of Principles on Permits - Schedule 14 paragraph 8 (3))**

A prize gaming permit is issued by the licensing authority to authorise the provision of facilities for gaming with prizes on specified premises. An application for a prize gaming permit can only be made by a person who occupies or plans to occupy the relevant premises and if the applicant is an individual, he must be aged 18 or over. An application cannot be made if a premises licence or club gaming permit is in effect for the same premises.

An application to this licensing authority should be accompanied by the appropriate fee, plan of the premises, premises' risk assessment, proof of applicant's date and place of birth and proof of address (if an individual) or if a company, the registered company's number and details.

This licensing authority will also require the applicant to demonstrate that:

- that they understand the limits to stakes and prizes that are set out in Regulations;
- and that the gaming offered is within the law.

In making its decision on an application for this permit the licensing authority does not need to have regard to the licensing objectives but must have regard to any Gambling Commission guidance.

It should be noted that there are conditions in the Gambling Act 2005 by which the permit holder must comply, but that the licensing authority cannot attach conditions. The conditions in the Act are:

- the limits on participation fees, as set out in regulations, must be complied with;

- all chances to participate in the gaming must be allocated on the premises on which the gaming is taking place and on one day; the game must be played and completed on the day the chances are allocated; and the result of the game must be made public in the premises on the day that it is played;
- the prize for which the game is played must not exceed the amount set out in regulations (if a money prize), or the prescribed value (if non-monetary prize); and
- participation in the gaming must not entitle the player to take part in any other gambling.

#### **4. Club Gaming and Club Machines Permits**

Members Clubs and Miners' welfare institutes may apply for a Club Gaming Permit or a Clubs Gaming machines permit. Commercial Clubs may only apply for a Club Machine permit.

A Club Gaming Permit will enable the premises to provide up to three gaming machines (categories B, C or D), equal chance gaming and games of chance as set out in the regulations issued by the Secretary of State. A Club Gaming machine permit will enable the premises to provide up to three gaming machines of category B, C or D.

The Guidance also makes it clear that before granting the permit the Authority will need to satisfy itself that the premises meet the requirements of a members' club and may grant the permit if the majority of members are over 18. In making an assessment on whether a club is a members' club, miners' welfare institute or a commercial club, the licensing authority will utilise the definitions of each as set out in the Licensing Act 2003.

An application to this licensing authority should be accompanied by the appropriate fee, plan of the premises, premises' risk assessment, proof of applicant's date and place of birth and proof of address (if an individual) or if a company, the registered company's number and details.

The Commission Guidance also notes that "licensing authorities may only refuse an application on the grounds that:

- the applicant does not fulfil the requirements for a members' or commercial club or miners' welfare institute and therefore is not entitled to receive the type of permit for which it has applied;
- the applicant's premises are used wholly or mainly by children and/or young persons;
- an offence under the Act or a breach of a permit has been committed by the applicant while providing gaming facilities;
- a permit held by the applicant has been cancelled in the previous ten years;
- an objection has been lodged by the Commission or the police.

There is also a 'fast-track' procedure available under the Act for premises which hold a Club Premises Certificate under the Licensing Act 2003 (Schedule 12 paragraph 10). As the Gambling Commission's Guidance for local authorities states: "Under the fast-track procedure there is no opportunity for objections to be made by the Commission or the police, and the grounds upon which an authority can refuse a permit are reduced" as the club or institute will already have been through a licensing process in relation to its club premises certificate under the Licensing Act 2003.

The grounds on which an application under this process may be refused are:

- that the club is established primarily for gaming, other than gaming prescribed by regulations under section 266 of the Act;
- that in addition to the prescribed gaming, the applicant provides facilities for other gaming; or
- that a club gaming permit or club machine permit issued to the applicant in the last ten years has been cancelled.

There are statutory conditions on club gaming permits that no child uses a category B or C machine on the premises and that the holder complies with the Gambling Commission's Code of Practice about the location and operation of gaming machines.

### **5. Small Society Lotteries**

The Gambling Act 2005 repeals the Lotteries and Amusements Act 1976. Local Authorities are now responsible for registering societies to run small society lotteries. As the Act gives the same definition to 'local authority' and 'licensing authority', this policy will refer to the 'licensing authority' as per the Gambling Commission guidance.

Promoting or facilitating a lottery will fall within 2 categories, and unless it does so, will be illegal:

- (a) Licensed Lotteries (requiring an Operating Licence from the Gambling Commission)
- (b) Exempt Lotteries (registered by the Licensing Authority)

Exempt Lotteries are lotteries permitted to run without a licence from the Gambling Commission and these are:

- (a) Small Society Lotteries;
- (b) Incidental Non-Commercial Lotteries;
- (c) Private Lotteries;
- (d) Private Society Lotteries;
- (e) Work Lottery;
- (f) Residents' Lottery;
- (g) Customer Lotteries;

Societies may organise lotteries if they are licensed by the Gambling Commission or fall within the exempt category, and therefore registered by the Licensing Authority, because their proceeds are below specified levels.

Applicants seeking to register as a Small Society Lottery must apply to the Licensing Authority in the area where their principal office is located.

Lotteries are regulated through a licensing and registration scheme, conditions imposed on licences, Gambling Commission's Code of Practice and Guidance. In exercising its function with regard to small society and exempt lotteries, the Licensing Authority will have due regard to the Gambling Commission's Guidance.

The Licensing Authority will require applicants who seek to register as a Small Society Lottery to set out the purpose for which the Society is established and will ask the Society to declare that they represent a bona fide non-commercial society and have no relevant convictions. The Licensing Authority may, however, seek further information or confirmation from the Society.

## **6. Temporary Use Notices**

There are a number of statutory limits as regards temporary use notices. Gambling Commission Guidance is noted that "The meaning of "premises" in part 8 of the Act is discussed in Part 7 of the Guidance. As with "premises", the definition of "a set of premises" will be a question of fact in the particular circumstances of each notice that is given. In the Act "premises" is defined as including "any place". In considering whether a place falls within the definition of "a set of premises", licensing authorities will need to look at, amongst other things, the ownership/occupation and control of the premises. This is a new permission and licensing authorities should be ready to object to notices where it appears that their effect would be to permit regular gambling in a place that could be described as one set of premises."

## **7. Occasional Use Notices:**

The licensing authority has very little discretion as regards these notices aside from ensuring that the statutory limit of 8 days in a calendar year is not exceeded. This licensing authority will though consider the definition of a 'track' and whether the applicant is permitted to avail him/herself of the notice.